

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9184 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUBODHCHANDRA JAGABHAI SHAH

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners

MR MUKESH PATEL, AGP for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 02/12/98

ORAL JUDGEMENT

Rule. Service of rule waived by Mr. Mukesh Patel,
Ld. A.G.P. for the respondent.

2. Heard. In this petition following reliefs have been claimed by the petitioners invoking this Court's jurisdiction under Article 226/227 of the Constitution of India :-

"(A) The Honourable Court may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the impugned order dated 15/5/1998 passed by the respondent herein, to the extent that he has included the land admeasuring 521 sq. mts. out of Survey No. 292/1/1 of Motera, belonging to Shri Ramanlal Ratanchand Shah in the holding of the petitioners; and consequently holding that the said land cannot be included in the holding of the petitioners;

(B) The Honourable Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the respondent-State to consider the application of the petitioners for exemption of their land in accordance with the guidelines prescribed by the State Government in the resolutions issued by it from time to time, after the disposal of this petition; "

3. The facts of the petitioners' case as appearing in the chronology of events indicate that on 21/8/1976 one Menaben, mother of the petitioners filled in Form No.1 in respect of her holdings u/S. 6(1) of the Urban land (Ceiling and Regulation) Act, 1976 (for short 'ULC Act') before the Competent Authority, Ahmedabad. The Competent Authority and Additional Collector, Urban Land Ceiling, Ahmedabad passed order on or around 22/5/1995 declaring certain lands held by the petitioners' mother as surplus land.

4. On 31/8/1996 the respondent issued a show cause notice for review of the order passed by the Competent Authority on 22/5/1995 u/S. 34 of the ULC Act. By communication dated 30/9/1997 the Senior Town Planner, AUDA issued a certificate about the inclusion of the land of the petitioners in the Town Planning Scheme. By impugned order dated 15/5/1998 the respondent declared that there was excess land to the extent 1101 sq. mtrs. of land.

5. On 11/11/1998 following order was passed :-

"Notice for final disposal returnable on

2/12/1998."

The reason for passing the aforesaid order was that in the form filled in by the petitioners' mother it was clearly indicated that out of the land bearing survey no. 292/1/1, land admeasuring 517 sq. mtrs. belonged to one Ramanlal Ratanchand Shah, who had also filled in a separate form. Thus it has been the case of the petitioners that the land admeasuring 517 sq. mtrs. is included in the form filled in by Ramanlal Ratanchand Shah and clarified in the form of the petitioners' mother. Despite this clarification the respondent issued show cause notice dated 31/8/1996 and even in that show cause notice also the land bearing survey no. 292/1/1 is shown to be 2109 sq. mtrs. and not 2611 sq. mtrs. The result was that the revisional authority has declared 1101 sq. mtrs. of land as excess land; whereas the Competent Authority had declared 948 sq. mtrs. of land out of survey no. 292/1/1 as excess land. This discrepancy appears to be apparent on the face of the record and, therefore, the matter requires reconsideration at the hands of the reviewing authority, namely the Deputy Secretary, Revenue Department, Government of Gujarat.

6. In so far as prayer (B) is concerned, the same clearly appears to be premature. However, it would be open to the petitioners to make appropriate representation and as and when such representation is made, it is obvious that the same has to be considered in accordance with law.

7. In the result following order is passed :-

The impugned order Annexure-F dated 15/5/1998 passed by the respondent - the Deputy Secretary, Revenue Department, Government of Gujarat is hereby quashed and set aside and the matter is remanded to the said authority for reconsideration and deciding it afresh after giving opportunity to the petitioner of being heard as expeditiously as possible, preferably within a period of 3 months from the date of receipt of this direction. Rule made absolute in the aforesaid terms. No order as to cost. DSP.

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PVRsca918498j.

